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8

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11

12 SONIA PEREZ, individually, and on  
behalf of a class of similarly situated  
13 individuals,

14 Plaintiff,

15 v.

16 THE KROGER CO., an Ohio  
corporation; and DOES 1-10,  
17 inclusive,

18 Defendant.  
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Case No.: 2:17-cv-2448 ODW (AGR<sub>x</sub>)

Hon. Otis D. Wright, II

**ORDER GRANTING STIPULATED  
PROTECTIVE ORDER**

Complaint Filed: March 2, 2017  
Trial Date: None Set

1 The Court, having considered the Parties' Stipulated Amended Protective  
2 Order, all the papers filed in connection and for good cause appearing, hereby  
3 GRANTS the Stipulation, and ORDERS the following:  
4

5 1. A. PURPOSES AND LIMITATIONS

6 Discovery in this Action is likely to involve production of confidential,  
7 proprietary, or private information for which special protection from public disclosure  
8 and from use for any purpose other than prosecuting this Action may be warranted.  
9 Accordingly, Plaintiff Sonia Perez and Defendant The Kroger Co. (collectively, "the  
10 Parties") hereby stipulate to and petition the Court to enter the following Stipulated  
11 Protective Order.

12 The Parties acknowledge that this Order does not confer blanket protections on  
13 all disclosures or responses to discovery and that the protection it affords from public  
14 disclosure and use extends only to the limited information or items that are entitled to  
15 confidential treatment under the applicable legal principles. The Parties further  
16 acknowledge, as set forth in Section 12.3 below, that this Stipulated Protective Order  
17 does not entitle them to file confidential information under seal; Civil Local Rule 79-  
18 5 sets forth the procedures that must be followed and the standards that will be  
19 applied when a Party seeks permission from the Court to file material under seal.

20 B. GOOD CAUSE STATEMENT

21 This action is likely to involve sales and pricing information, profit and cost  
22 information, market research and analysis, trade secrets, and other valuable research,  
23 development, commercial, financial, and/or proprietary information for which special  
24 protection from public disclosure and from use for any purpose other than prosecution  
25 of this Action is warranted. Such confidential and proprietary materials and  
26 information consist of, among other things, confidential business or financial  
27 information, information regarding confidential business practices, or other  
28 confidential research, development, or commercial information (including

1 information implicating privacy rights of third parties), information otherwise  
2 generally unavailable to the public, or which may be privileged or otherwise protected  
3 from disclosure under state or federal statutes, court rules, case decisions, or common  
4 law. Accordingly, to expedite the flow of information, to facilitate the prompt  
5 resolution of disputes over confidentiality of discovery materials, to adequately  
6 protect information the Parties are entitled to keep confidential, to ensure that the  
7 Parties are permitted reasonable necessary uses of such material in preparation for and  
8 in the conduct of trial, to address their handling at the end of the litigation, and serve  
9 the ends of justice, a protective order for such information is justified in this matter. It  
10 is the intent of the Parties that information will not be designated as confidential for  
11 tactical reasons and that nothing be so designated without a good faith belief that it  
12 has been maintained in a confidential, non-public manner, and there is good cause  
13 why it should not be part of the public record of this case.

14 2. DEFINITIONS

15 2.1 Action: the pending federal court action titled *Perez, et al. v. The*  
16 *Kroger Co., et al.*, Case No. 2:17-cv-2448 ODW (AGRx).

17 2.2 Challenging Party: a Party or Non-Party that challenges the designation  
18 of information or items under this Order.

19 2.3 “CONFIDENTIAL” Information or Items: information (regardless of  
20 how it is generated, stored, or maintained) or tangible things that qualify for  
21 protection under Federal Rule of Civil Procedure 26(c), and as specified above in the  
22 Good Cause Statement.

23 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as  
24 their support staff).

25 2.5 Designating Party: a Party or Non-Party that designates information or  
26 items that it produces in disclosures or in responses to discovery as  
27 “CONFIDENTIAL.”

28 2.6 Disclosure or Discovery Material: all items or information, regardless of

1 the medium or manner in which it is generated, stored, or maintained (including,  
2 among other things, testimony, transcripts, and tangible things), that are produced or  
3 generated in disclosures or responses to discovery in this Action.

4 2.7 Expert: a person with specialized knowledge or experience in a matter  
5 pertinent to the Action who has been retained by a Party or its counsel to serve as an  
6 expert witness or as a consultant in this Action.

7 2.8 House Counsel: attorneys who are employees of a Party to this Action.  
8 House Counsel does not include Outside Counsel of Record or any other outside  
9 counsel.

10 2.9 Non-Party: any natural person, partnership, corporation, association, or  
11 other legal entity not named as a Party to this Action.

12 2.10 Outside Counsel of Record: attorneys who are not employees of a Party  
13 to this Action but are retained to represent or advise a Party to this Action and have  
14 appeared in this Action on behalf of that Party or are affiliated with a law firm that  
15 has appeared on behalf of that Party, and includes support staff.

16 2.11 Party: any party to this Action, including all of its officers, directors,  
17 employees, consultants, retained experts, and Outside Counsel of Record (and their  
18 support staffs).

19 2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
20 Discovery Material in this Action.

21 2.13 Professional Vendors: persons or entities that provide litigation support  
22 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
23 demonstratives, and organizing, storing, or retrieving data in any form or medium)  
24 and their employees and subcontractors.

25 2.14 Protected Material: any Disclosure or Discovery Material that is  
26 designated as “CONFIDENTIAL.”

27 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material  
28 from a Producing Party.

1     3.     SCOPE

2             The protections conferred by this Stipulation and Order cover not only  
3     Protected Material (as defined above), but also (1) any information copied or  
4     extracted from Protected Material; (2) all copies, excerpts, summaries, or  
5     compilations of Protected Material; and (3) any testimony, conversations, or  
6     presentations by Parties or their Counsel that might reveal Protected Material.  
7     Any use of Protected Material at trial shall be governed by the orders of the trial  
8     judge. This Order does not govern the use of Protected Material at trial.

9     4.     DURATION

10            Even after final disposition of this Action, the confidentiality obligations  
11    imposed by this Order shall remain in effect until a Designating Party agrees  
12    otherwise in writing or a court order otherwise directs. Final disposition shall be  
13    deemed to be the later of (1) dismissal of all claims and defenses in this Action, with  
14    or without prejudice; and (2) final judgment herein after the completion and  
15    exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
16    including the time limits for filing any motions or applications for extension of time  
17    pursuant to applicable law.

18    5.     DESIGNATING PROTECTED MATERIAL

19            5.1    Exercise of Restraint and Care in Designating Material for Protection.

20    Each Party or Non-Party that designates information or items for protection under  
21    this Order must take care to limit any such designation to specific material that  
22    qualifies under the appropriate standards. The Designating Party must designate for  
23    protection only those parts of material, documents, items, or oral or written  
24    communications that qualify so that other portions of the material, documents,  
25    items, or communications for which protection is not warranted are not swept  
26    unjustifiably within the ambit of this Order.

27            Mass, indiscriminate, or routinized designations are prohibited. Designations  
28    that are shown to be clearly unjustified or that have been made for an improper

1 purpose (e.g., to unnecessarily encumber the case development process or to impose  
2 unnecessary expenses and burdens on other Parties) may expose the Designating  
3 Party to sanctions.

4 If it comes to a Designating Party's attention that information or items that it  
5 designated for protection do not qualify for protection, the Designating Party must  
6 promptly notify all other Parties that it is withdrawing the inapplicable designation.

7 5.2 Manner and Timing of Designations. Except as otherwise provided in  
8 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
9 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
10 under this Order must be clearly so designated before the material is disclosed or  
11 produced. Designation in conformity with this Order requires:

12 (a) for information in documentary form (e.g., paper or electronic  
13 documents, but excluding transcripts of depositions or other pretrial or trial  
14 proceedings), that the Producing Party affix at a minimum, the legend  
15 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that  
16 contains protected material. If only a portion or portions of the material on a page  
17 qualifies for protection, the Producing Party also must clearly identify the protected  
18 portion(s) (e.g., by making appropriate markings in the margins).

19 A Party or Non-Party that makes original documents available for inspection  
20 need not designate them for protection until after the inspecting Party has indicated  
21 which documents it would like copied and produced. During the inspection and  
22 before the designation, all of the material made available for inspection shall be  
23 deemed "CONFIDENTIAL." After the inspecting Party has identified the  
24 documents it wants copied and produced, the Producing Party must determine which  
25 documents, or portions thereof, qualify for protection under this Order. Then,  
26 before producing the specified documents, the Producing Party must affix the  
27 "CONFIDENTIAL legend" to each page that contains Protected Material. If only a  
28 portion or portions of the material on a page qualifies for protection, the Producing

1 Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
2 markings in the margins).

3 (b) testimony given in depositions and the transcripts and video recordings  
4 of depositions must be treated as “CONFIDENTIAL” for a period of 30 days after  
5 receipt of the final deposition transcript (or such later time as agreed to by the  
6 Parties) to allow time for the Parties to designate by page and line number those  
7 portions of the testimony that are to be treated as “CONFIDENTIAL.” If any part  
8 of a deposition recorded by videographic means is designated as  
9 “CONFIDENTIAL,” the recording storage medium and its container shall be so  
10 labeled.

11 (c) for information produced in some form other than documentary and for  
12 any other tangible items, that the Producing Party affix in a prominent place on the  
13 exterior of the container or containers in which the information is stored the legend  
14 “CONFIDENTIAL.” If only a portion or portions of the information warrants  
15 protection, the Producing Party, to the extent practicable, shall identify the protected  
16 portion(s).

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
18 failure to designate qualified information or items does not, standing alone, waive  
19 the Designating Party’s right to secure protection under this Order for such material.  
20 Upon timely correction of a designation, the Receiving Party must make reasonable  
21 efforts to assure that the material is treated in accordance with the provisions of this  
22 Order.

## 23 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

24 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
25 designation of confidentiality at any time that is consistent with the Court’s  
26 Scheduling Order.

27 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
28 resolution process under Local Rule 37-1 et seq.

1           6.3    The burden of persuasion in any such challenge proceeding shall be on  
2 the Designating Party. Frivolous challenges, and those made for an improper  
3 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
4 Parties) may expose the Challenging Party to sanctions. Unless the Designating  
5 Party has waived or withdrawn the confidentiality designation, all Parties shall  
6 continue to afford the material in question the level of protection to which it is  
7 entitled under the Producing Party's designation until the Court rules on the  
8 challenge.

9       7.     ACCESS TO AND USE OF PROTECTED MATERIAL

10           7.1   Basic Principles. A Receiving Party may use Protected Material that is  
11 disclosed or produced by another Party or by a Non-Party in connection with this  
12 Action only for prosecuting, defending, or attempting to settle this Action. Such  
13 Protected Material may be disclosed only to the categories of persons and under the  
14 conditions described in this Order. When the Action has been terminated, a  
15 Receiving Party must comply with the provisions of section 13 below (FINAL  
16 DISPOSITION).

17           Protected Material must be stored and maintained by a Receiving Party at a  
18 location and in a secure manner that ensures that access is limited to the persons  
19 authorized under this Order.

20           7.2   Disclosure of "CONFIDENTIAL" Information or Items. Unless  
21 otherwise ordered by the Court or permitted in writing by the Designating Party, a  
22 Receiving Party may disclose any information or item designated  
23 "CONFIDENTIAL" only to:

24           (a)    the Receiving Party's Outside Counsel of Record in this Action, as well  
25 as employees of said Outside Counsel of Record to whom it is reasonably necessary  
26 to disclose the information for this Action;

27           (b)    the officers, directors, and employees (including House Counsel) of the  
28 Receiving Party to whom disclosure is reasonably necessary for this Action;



1 (c) Experts (as defined in this Order) of the Receiving Party to whom  
2 disclosure is reasonably necessary for this Action and who have signed the  
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (d) the Court and its personnel;

5 (e) court reporters and their staff;

6 (f) professional jury or trial consultants, mock jurors, and Professional  
7 Vendors to whom disclosure is reasonably necessary for this Action and who have  
8 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

9 (g) the author or recipient of a document containing the information or a  
10 custodian or other person who otherwise possessed or knew the information;

11 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
12 Action to whom disclosure is reasonably necessary provided they will not be  
13 permitted to keep any confidential information unless they sign the  
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise  
15 agreed by the Designating Party or ordered by the Court. Pages of transcribed  
16 deposition testimony or exhibits to depositions that reveal Protected Material may  
17 be separately bound by the court reporter and may not be disclosed to anyone except  
18 as permitted under this Stipulated Protective Order; and

19 (i) any mediator or settlement officer, and their supporting personnel,  
20 mutually agreed upon by any of the Parties engaged in settlement discussions.

21 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
22 OTHER LITIGATION

23 If a Party is served with a subpoena or a court order issued in other litigation  
24 that compels disclosure of any information or items designated in this Action as  
25 “CONFIDENTIAL,” that Party must:

26 (a) promptly notify in writing the Designating Party. Such notification  
27 shall include a copy of the subpoena or court order;  
28

1 (b) promptly notify in writing the party who caused the subpoena or order  
2 to issue in the other litigation that some or all of the material covered by the  
3 subpoena or order is subject to this Protective Order. Such notification shall include  
4 a copy of this Stipulated Protective Order; and

5 (c) cooperate with respect to all reasonable procedures sought to be  
6 pursued by the Designating Party whose Protected Material may be affected.

7 If the Designating Party timely seeks a protective order, the Party served with  
8 the subpoena or court order shall not produce any information designated in this  
9 action as “CONFIDENTIAL” before a determination by the court from which the  
10 subpoena or order issued, unless the Party has obtained the Designating Party’s  
11 permission. The Designating Party shall bear the burden and expense of seeking  
12 protection in that court of its confidential material and nothing in these provisions  
13 should be construed as authorizing or encouraging a Receiving Party in this Action to  
14 disobey a lawful directive from another court.

15 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
16 PRODUCED IN THIS ACTION

17 (a) The terms of this Order are applicable to information produced by a  
18 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information  
19 produced by Non-Parties in connection with this Action is protected by the remedies  
20 and relief provided by this Order. Nothing in these provisions should be construed  
21 as prohibiting a Non-Party from seeking additional protections.

22 (b) In the event that a Party is required, by a valid discovery request, to  
23 produce a Non-Party’s confidential information in its possession, and the Party is  
24 subject to an agreement with the Non-Party not to produce the Non-Party’s  
25 confidential information, then the Party shall:

26 (1) promptly notify in writing the Requesting Party and the Non-  
27 Party that some or all of the information requested is subject to a confidentiality  
28 agreement with a Non-Party;

1 (2) promptly provide the Non-Party with a copy of the Stipulated  
2 Protective Order in this Action, the relevant discovery request(s), and a reasonably  
3 specific description of the information requested; and

4 (3) make the information requested available for inspection by the  
5 Non-Party, if requested.

6 (c) If the Non-Party fails to seek a protective order from this Court within  
7 14 days of receiving the notice and accompanying information, the Receiving Party  
8 may produce the Non-Party's confidential information responsive to the discovery  
9 request. If the Non-Party timely seeks a protective order, the Receiving Party shall  
10 not produce any information in its possession or control that is subject to the  
11 confidentiality agreement with the Non-Party before a determination by the Court.  
12 Absent a court order to the contrary, the Non-Party shall bear the burden and expense  
13 of seeking protection in this Court of its Protected Material.

14 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
16 Protected Material to any person or in any circumstance not authorized under this  
17 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
18 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts  
19 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or  
20 persons to whom unauthorized disclosures were made of all the terms of this Order,  
21 and (d) request such person or persons to execute the "Acknowledgment and  
22 Agreement to Be Bound" that is attached hereto as Exhibit A.

23 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
24 PROTECTED MATERIAL

25 When a Producing Party gives notice to Receiving Parties that certain  
26 inadvertently produced material is subject to a claim of privilege or other protection,  
27 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
28 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure

1 may be established in an e-discovery order that provides for production without prior  
2 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
3 Parties reach an agreement on the effect of disclosure of a communication or  
4 information covered by the attorney-client privilege or work product protection, the  
5 Parties may incorporate their agreement in the stipulated protective order submitted to  
6 the Court.

7 12. MISCELLANEOUS

8 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
9 person to seek its modification by the Court in the future.

10 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
11 Protective Order no Party waives any right it otherwise would have to object to  
12 disclosing or producing any information or item on any ground not addressed in this  
13 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
14 ground to use in evidence of any of the material covered by this Protective Order.

15 12.3 Filing Protected Material. A Party that seeks to file under seal any  
16 Protected Material must comply with Civil Local Rule 79-5. Protected Material may  
17 only be filed under seal pursuant to a court order authorizing the sealing of the  
18 specific Protected Material at issue. If a Party's request to file Protected Material  
19 under seal is denied by the Court, then the Receiving Party may file the information in  
20 the public record unless otherwise instructed by the Court.

21 13. FINAL DISPOSITION

22 After the final disposition of this Action, as defined in paragraph 4, within 60  
23 days of a written request by the Designating Party, each Receiving Party must return  
24 all Protected Material to the Producing Party or destroy such material. As used in this  
25 subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
26 summaries, and any other format reproducing or capturing any of the Protected  
27 Material. Whether the Protected Material is returned or destroyed, the Receiving  
28 Party must submit a written certification to the Producing Party (and, if not the same

1 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies  
2 (by category, where appropriate) all the Protected Material that was returned or  
3 destroyed and (2) affirms that the Receiving Party has not retained any copies,  
4 abstracts, compilations, summaries or any other format reproducing or capturing any  
5 of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
6 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing  
7 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
8 reports, attorney work product, and consultant and expert work product, even if such  
9 materials contain Protected Material. Any such archival copies that contain or  
10 constitute Protected Material remain subject to this Protective Order as set forth in  
11 Section 4 (DURATION).

12 14. Any violation of this Order may be punished by any and all appropriate  
13 measures including, without limitation, contempt proceedings and/or monetary  
14 sanctions.

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18 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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22  
23 DATED: March 13, 2018



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Hon. Alicia G. Rosenberg  
United States Magistrate Judge

**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare  
under penalty of perjury that I have read in its entirety and understand the Stipulated  
Protective Order that was issued by the United States District Court for the Central  
District of California on \_\_\_\_\_ [print or type date] in the case of *Perez, et*  
*al. v. The Kroger Co., et al.*, Case No. 2:17-cv-2448 ODW (AGRx). I agree to  
comply with and to be bound by all the terms of this Stipulated Protective Order and I  
understand and acknowledge that failure to so comply could expose me to sanctions  
and punishment in the nature of contempt. I solemnly promise that I will not disclose  
in any manner any information or item that is subject to this Stipulated Protective  
Order to any person or entity except in strict compliance with the provisions of this  
Order. I further agree to submit to the jurisdiction of the United States District Court  
for the Central District of California for the purpose of enforcing the terms of this  
Stipulated Protective Order, even if such enforcement proceedings occur after  
termination of this action. I hereby appoint \_\_\_\_\_  
[print or type full name] of \_\_\_\_\_ [print or  
type full address and telephone number] as my California agent for service of process  
in connection with this action or any proceedings related to enforcement of this  
Stipulated Protective Order.

**Date:** \_\_\_\_\_

**City and State where sworn and signed:** \_\_\_\_\_

**Printed name:** \_\_\_\_\_

**Signature:** \_\_\_\_\_